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Bureau of Land Management (BLM) Lands and National Forests

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SUMMARY

The 109th Congress is considering issues related to the public lands managed by the Bureau of Land Management (BLM) and the national forests managed by the Forest Service (FS). The Administration is addressing issues through budgetary, regulatory, and other actions. Several key issues of congressional and administrative interest are covered here.

Energy Resources. The Energy Policy Act of 2005 has been enacted into law and affects energy development on federal lands in a variety of ways, including through changes to the federal oil, gas, and coal leasing programs and the application of environmental laws to certain energy-related agency actions. Significant changes at the administrative level may be forthcoming in response to the legislation's enactment. New legislation has also been introduced to address evolving energy issues related to public lands.

Wild Horses and Burros. Controversial changes to the Wild Free-Roaming Horses and Burros Act of 1971 gave the agencies authority to sell certain old and unadoptable animals and removed the ban on selling wild horses and burros and their remains for commercial products. BLM has resumed animal sales with provisions to prevent their slaughter. Bills have been introduced to overturn the changes (H.R. 297/S. 576) and to foster adoptions and sales (H.R. 2993/S. 1273).

Wilderness. Many wilderness recommendations for federal lands are pending. Questions persist about wilderness review and managing wilderness study areas (WSAs). Bills to designate areas have been introduced, and the 109th Congress may address wilderness review and WSA protection.

Wildfire Protection. The Healthy Forests Restoration Act of 2003 (P.L. 108-148), President Bush's Healthy Forests Initiative, and other provisions may help protect communities from wildfires by expediting fuel reduction. Wildfire protection also has been addressed through changes in regulations. The 2005 fire season is on a pace to be the worst on record. The 109th Congress is conducting oversight on fire protection and implementation of the law and regulations. Hurricane Katrina damaged southern forests, exacerbating fuel problems

Southern Nevada Land Sales. The Southern Nevada Public Land Management Act allows the Secretary of the Interior to sell land near Las Vegas, with the proceeds permanently appropriated for certain purposes. The President has proposed altering the distribution of receipts, with 70% going to the Treasury rather than to a special account. No related legislation has been introduced.

R.S. 2477 Rights of Way. Revised Statute (R.S.) 2477 granted rights of way to construct highways across unreserved federal lands, but the extent of valid rights of way is unclear in some states. Bush Administration regulations on "disclaimers of interest" may be used to clear title to R.S. 2477 highway easements; this may "pertain to" R.S. 2477 which has been prohibited by Congress.

Other Issues. The Administration and Congress have addressed other issues, as well, including competitive sourcing, grazing management, national forest planning, FS NEPA categorical exclusions, national forest roadless areas, hardrock mining, and national monuments.

MOST RECENT DEVELOPMENTS

- P.L. 109-54, the FY2006 Interior appropriations act, capped funds for DOI and FS competitive sourcing studies; barred funds for energy leasing activities in national monuments; and provided funds for wildfire protection for management of wild horses and burros.
- As of October 14, wildfires in 2005 have burned 8.2 million acres, more than any of the past five years, nearly 80% above the 10-year average, and on a pace to exceed the post-1960 record of 8.4 million acres (in 2000).
- As of September 20, 2005, 1,445 wild horses and burros have been sold under a new authority enacted in December of 2004.
- On August 9, 2005, BLM announced an intent to prepare a supplement to its final environmental impact statement on proposed changes to regulations on livestock grazing.
- On July 2, 2005, a U.S. District Court ruled that certain FS regulations related to categorical exclusions from NEPA for certain decisions (and thus also exempt from certain public challenges) violated the law. The FS has responded by suspending more than 1,500 permits, projects, and contracts.

BACKGROUND AND ANALYSIS

The Bureau of Land Management (BLM) in the Department of the Interior (DOI) and the Forest Service (FS) in the Department of Agriculture (USDA) manage 454 million acres of land, two-thirds of the land owned by the federal government and one-fifth of the total U.S. land area. The BLM manages 261.5 million acres of land, predominantly in the West. The FS administers 192.5 million acres of federal land, also concentrated in the West.

The BLM and FS have similar management responsibilities for their lands, and many key issues affect both agencies' lands. However, each agency also has unique emphases and functions. For instance, most BLM lands are rangelands, and the BLM administers mineral development on all federal lands. Most federal forests are managed by the FS, and only the FS has a cooperative program to assist nonfederal landowners. Moreover, development of the two agencies has differed, and historically they have focused on different issues.

History of the Bureau of Land Management

For the BLM, many of the issues traditionally center on the agency's responsibilities for land disposal, range management (particularly grazing), and minerals development. These three key functions were assumed by the BLM when it was created in 1946, by the merger of the General Land Office (itself created in 1812) and the U.S. Grazing Service (created in 1934). The General Land Office had helped convey land to settlers and issued leases and administered mining claims on the public lands, among other functions. The U.S. Grazing Service had been established to manage the public lands best suited for livestock grazing under the Taylor Grazing Act of 1934 (TGA, 43 U.S.C. §§315, et seq.).

Congress frequently has debated how to manage federal lands, and whether to retain or dispose of the remaining public lands. In 1976, Congress enacted the Federal Land Policy

and Management Act of 1976 (FLPMA, 43 U.S.C. §§1701, et seq.), sometimes called BLM's Organic Act because it consolidated and articulated the agency's responsibilities. Among other provisions, the law establishes a general national policy that the BLM-managed public lands be retained in federal ownership, establishes management of the public lands based on the principles of multiple use and sustained yield, and generally requires that the federal government receive fair market value for the use of public lands and resources. Today BLM public land management encompasses diverse uses, resources, and values, such as energy and mineral development, timber harvesting, livestock grazing, recreation, wild horses and burros, fish and wildlife habitat, and preservation of natural and cultural resources.

History of the Forest Service

The FS was created in 1905, when forest lands reserved by the President (beginning in 1891) were transferred from DOI into the existing USDA Bureau of Forestry (initially an agency for private forestry assistance and forestry research). Management direction for the national forests, first enacted in 1897 and expanded in 1960, identifies the purposes for which the lands controlled by the Forest Service are to be managed and directs "harmonious and coordinated management" to provide sustained yields of the many resources found in the national forests — including timber, grazing, recreation, wildlife and fish, and water.

Many issues concerning national forest management and use have focused on the appropriate level and location of timber harvesting. Major conflicts over clearcutting began in the 1960s, and litigation in the early 1970s successfully challenged FS clearcutting in West Virginia and elsewhere. In part to address these issues, Congress enacted the National Forest Management Act of 1976 (NFMA; P.L. 94-588) to revise timber sale authorities and to elaborate on considerations and requirements in land and resource management plans. This NFMA planning has been widely criticized as expensive, time-consuming, and ineffective for making decisions and informing the public. (See "Other Issues," below.)

Wilderness protection also is a continuing issue for the FS. The Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. §528-531) included wilderness as an appropriate use of national forest lands, and possible national forest wilderness areas have been reviewed under the 1964 Wilderness Act as well as in the national forest planning process. Pressure to protect pending wilderness recommendations and other areas contributed to the Clinton Administration's decision to protect "roadless areas" not designated as wilderness. (See "Other Issues," below.)

Scope of Issue Brief

Many issues affecting BLM and FS lands are similar, and the missions of the agencies are nearly identical. By law, the BLM and FS lands are to be administered for multiple uses, although slightly different uses are specified for each agency. In practice, the land uses considered by the agencies include recreation, range, timber, minerals, watershed, wildlife and fish, and conservation. BLM and FS lands also are required to be managed for sustained yield — a high level of resource outputs in perpetuity, without impairing the productivity of the lands. Further, many issues, programs, and policies affect both agencies. For these reasons, BLM and FS lands often are discussed together, as in this issue brief.

This brief focuses on several issues affecting BLM and FS lands that are of interest to the 109th Congress. While in some cases the issues discussed here are relevant to other federal lands and agencies, this brief does not comprehensively cover issues primarily affecting other federal lands, such as the National Park System (managed by the National Park Service, DOI) or the National Wildlife Refuge System (managed by the Fish and Wildlife Service, DOI). For background on federal land management generally, see CRS Report RL32393, *Federal Land Management Agencies: Background on Land and Resources Management*. For brief, general information on natural resource issues, see CRS Report RL32699, *Natural Resources: Selected Issues for the 109th Congress*. Information on FY2006 appropriations for the BLM and FS (and other agencies and programs funded by Interior and Related Agencies appropriations bills) is included in CRS Report RL32893, *Interior, Environment, and Related Agencies: FY2006 Appropriations*. For information on park and recreation issues, see CRS Issue Brief IB10145, *National Park Management*, and CRS Issue Brief IB10141, *Recreation on Federal Lands*. For information on oil and gas leasing in the Arctic National Wildlife Refuge (ANWR), see CRS Issue Brief IB10136, *Arctic National Wildlife Refuge (ANWR): Controversies for the 109th Congress*. For information on local compensation for the tax-exempt status of federal lands, see CRS Report RL31392, *PILT (Payments in Lieu of Taxes): Somewhat Simplified*, and CRS Report RS22004, *The Secure Rural Schools and Community Self-Determination Act of 2000: Forest Service Payments to Counties*. For information on other related issues, see the CRS web page at [http://www.crs.gov/].

Energy Resources (by Aaron M. Flynn)

Background. BLM administers the Mineral Leasing Act of 1920, which governs the leasing of onshore oil and gas, coal, and other minerals on many federal lands, including lands managed by the BLM and the FS. Leasing on BLM lands goes through a multi-step approval process. If the minerals are located on FS lands, the FS must perform a leasing analysis and approve leasing decisions for specific lands before BLM may lease minerals.

A controversial issue is whether and how to increase access to federal lands for energy and mineral development. A BLM study (Dec. 1, 2000) determined that, of the roughly 700 million acres of federal minerals, (1) about 165 million acres (24%) have been withdrawn from mineral entry, leasing, and sale, subject to valid existing rights, and (2) mineral development on another 182 million acres (26%) is subject to the approval of the surface management agency and must not be in conflict with land designations and plans. In January 2003, several federal agencies issued a similar assessment, *Scientific Inventory of Onshore Federal Lands' Oil and Gas Resources and Reserves and the Extent and Nature of Restrictions or Impediments to Their Development.* Some assert that these reports show that more federal lands currently are available for energy development than generally had been realized, while others focus on the amount of lands withdrawn.

The oil and gas industry contends that entry into areas off-limits to development, particularly in the Rocky Mountain region, is necessary to ensure future domestic oil and gas supplies. Opponents maintain that the restricted lands are environmentally sensitive or unique, and the United States could realize equivalent energy gains through conservation and increased exploration elsewhere. (For more information, see CRS Report RL33014, *Leasing and Permitting for Oil and Gas Development on Federal Public Domain Lands*.)

Administrative Actions. Executive Order 13212 (May 18, 2001) established a policy of encouraging increased energy production on federal lands, and a series of administrative actions have followed to implement this policy. Recent FS land management planning regulations (70 *Fed. Reg.* 1023, Jan. 5, 2005) have been promulgated to increase management flexibility and streamline energy project permitting, among other things. (See "Other Issues," below.) The BLM and FS have also proposed significant changes to regulations governing the approval of oil and gas leases (70 *Fed. Reg*. 43349, July 27, 2005). The changes would include new requirements for development on split estates, a new approval process for multiple wells based on a single environmental review and a Master Development Plan, and additional bonding requirements. The proposal would also encourage the use of various best management practices aimed at reducing surface, visual, and wildlife impacts.

Additionally, BLM has issued a final rule (70 *Fed. Reg.* 58854, Oct. 7, 2005) governing the fees the agency will charge for processing documents associated with mineral development. In accordance with the Energy Policy Act of 2005, certain fee changes associated with oil and gas applications for permits to drill and geothermal exploration and drilling permits have been deferred until the completion of a permitting pilot program.

Legislative Activity. The Energy Policy Act of 2005 (P.L. 109-58) has been enacted into law. The new law affects federal lands in a variety of ways. It significantly amends the Geothermal Steam Act of 1970, providing new guidelines for geothermal development of BLM and FS lands, imposing new royalty rates, and deeming geothermal leasing consistent with existing land management plans. The law also amends the Mineral Leasing Act to modify statutory requirements governing federal coal leases, ending the 160-acre limit on coal lease modifications and allowing certain mining operations to continue beyond the current 40-year limitation. In addition, the law makes several changes in the regulation of onshore federal oil and gas. The Secretary of the Interior must evaluate and streamline the existing oil and gas leasing and permitting processes and establish a Federal Permit Streamlining Pilot Project. Oil and gas lease acreage limitations are also relaxed and a five-year reclamation program for abandoned well sites on federal lands is authorized. Additional provisions include requirements that DOI and USDA establish utility corridors on federal lands and that the Secretary of Interior take additional steps to move forward with oil shale leasing.

The House has recently passed new energy policy legislation, and it too would affect the administration of BLM and FS lands, if enacted. The Gasoline for America's Security Act, H.R. 3893, would, among other things, require the President to designate certain federal lands, which might include lands under the jurisdiction of BLM or FS, as suitable for refinery construction or expansion. Upon such designation, an expedited permitting process would be available for a refinery sited in the designated area.

Whether to open the Arctic National Wildlife Refuge (ANWR) to oil and gas development continues to be one of the most contentious issues in the energy debate. This issue may be addressed through the budget reconciliation process. For more information, see CRS Issue Brief IB10136, *Arctic National Wildlife Refuge (ANWR): Controversies for the 109th Congress.*

Finally, legislation affecting energy development on federal lands has been introduced in response to Hurricane Katrina. The Hurricane Katrina Energy Emergency Relief Act, H.R. 3710, would require the suspension of any royalty relief program applicable to oil or natural gas production from federal lands, so long as specified commodity prices were maintained. The resulting royalty payments would then be available at the discretion of the President for authorized disaster relief and for the Low-Income Home Energy Assistance Program. Additional bills have been introduced in the 109th Congress addressing specific energy and other mineral leasing issues, such as geothermal energy access, potash or soda ash royalties, and coal leasing procedures. However, the numerous bills on specific energy and other mineral leasing issues are not listed in the "Legislation" section of this report.

Wild Horses and Burros (by Carol Hardy Vincent)

Background. The Wild Free-Roaming Horses and Burros Act of 1971 (16 U.S.C. §§1331, et seq.) sought to protect wild horses and burros on federal land and placed them under the jurisdiction of BLM and the FS. For years, management of wild horses and burros has generated controversy and lawsuits. Controversies have involved the method of determining the "appropriate management levels" (AMLs) for herd sizes, as the statute requires; whether and how to remove animals from the range to achieve AMLs; alternatives to adoption for reducing wild horses and burros on the range, particularly fertility control and holding animals in long-term facilities; and whether appropriations for managing wild horses and burros are adequate. There was particular concern that adopted horses were slaughtered, despite prohibitions on that practice. (For background, see CRS Report RS21423, *Wild Horse and Burro Issues*.)

The 108th Congress enacted changes to wild horse and burro management on federal lands (§142, P.L. 108-447). These changes have intensified controversies. One change gave the agencies new authority to sell, "without limitation," excess animals (or their remains) that essentially are deemed too old (more than 10 years old) or otherwise unable to be adopted (tried unsuccessfully at least three times). Proceeds are to be used for the BLM wild horse and burro adoption program. A second change removed the ban on wild horses and burros and their remains being sold for processing into commercial products. A third change removed criminal penalties for processing into commercial products the remains of a wild horse or burro, if it is sold under the new authority. Also, the law did not expressly prohibit BLM from slaughtering healthy wild horses and burros, as annual appropriations bills apparently had since FY1988. These changes have been supported as providing a cost-effective way to help the agencies achieve AML, to improve the health of the animals, to protect range resources, and to restore a natural ecological balance on federal lands. The changes have been opposed as potentially leading to the slaughter of healthy animals.

Administrative Actions. On April 25, 2005, BLM temporarily suspended sale and delivery of wild horses and burros, due to concerns about the slaughter of some animals sold under the new authority. According to BLM, 41 animals that were sold under the new authority were subsequently resold or traded, and then sent to slaughterhouses by the new owners. Another 52 animals also had been sold to slaughterhouses, but Ford Motor Co. committed to purchasing them. On May 19, 2005, the agency resumed sales after revising its bill of sale and pre-sale negotiation procedures to protect sold animals from slaughter. Purchasers formerly gave written affirmation of an intent to provide humane care, and now also must agree not to knowingly sell or transfer ownership of animals to persons or

organizations that intend to resell, trade, or give away animals for processing into commercial products. Sales contracts also now incorporate criminal penalties for anyone who knowingly or willfully falsifies or conceals information. Some horse advocates have questioned whether the penalties would withstand legal challenge because the law provides for the sale of animals without limitation. Also, according to BLM, purchased animals are classified as private property free of federal protection. BLM also pursued agreements with the three U.S. horse processing plants to not purchase horses sold under the new law. While there are no written agreements, the plants apparently have taken steps to preclude accepting these animals.

According to the BLM, 8,400 wild horses and burros initially were affected by the new law. There are about 7,000 animals available for sale currently, with 1,445 having been sold and delivered as of September 20, 2005. BLM has been negotiating sales of groups of excess animals, for instance with ranchers, tribes, and horse, humane, and other organizations, with the price determined on a case-by-case basis. Ranchers, horse advocates, and other prospective purchasers are considering or promoting several related ideas. They include outsourcing the sale of wild horses and burros; creating private sanctuaries as tourist attractions; raising funds for wild horses and burros by selling horse sponsorships; and allowing proceeds of land disposals to be used for wild horse and burro management.

As of February 2005, there were about 32,000 wild horses and burros on the range, with the national maximum AML set at 28,000, according to BLM. BLM has been pursuing a multi-year effort to achieve AML. Some critics assert that the current AMLs are set low in favor of livestock. BLM manages another 24,500 animals in holding facilities, as of October 2005. For management of wild horses and burros during FY2006, BLM requested $36.9 million, a reduction of $2.1 million (5%) from the FY2005 level of $39.0 million. The agency asserted that the reduction can be accomplished through program efficiencies, such as a reduction in the cost of the adoption program; an increase in animals adopted; and an expected reduction during FY2005 of 5,000 animals in long-term holding facilities. The cost per animal per year in these facilities is $465-$500, according to varying BLM estimates.

Legislative Activity. P.L. 109-54, the FY2006 Interior appropriations law, provided $36.9 million for BLM management of wild horses and burros (excluding a rescission of 0.476%), and an additional $1.2 million in fees collected from adoptions. It did not prohibit funds for the sale or slaughter of wild horses and burros, as originally passed by the House. In addition, bills have been introduced (H.R. 297 and S. 576) to overturn the changes to wild horse and burro management enacted during the 108th Congress. (See "Background," above.) Other bills (H.R. 2993 and S. 1273) seek to foster the sale and adoption of wild horses and burros while establishing further protections. Changes include eliminating the limit of four animals per adopter per year; reducing the minimum adoption fee from $125 to $25 per animal; removing the provision that excess, unadoptable animals be destroyed in a humane and cost-effective manner and making them available for sale; imposing a one-year wait period before buyers obtain title to sold animals, and removing the provision for sale of animals "without limitation." Some opponents fear that additional sales or adoptions could increase the risk of slaughter.

Wilderness (by Ross W. Gorte and Pamela Baldwin)

Background. The Wilderness Act established the National Wilderness Preservation System in 1964 and directed that only Congress could designate federal lands as wilderness. Designations are often controversial because commercial activities, motorized access, and roads, structures, and facilities generally are restricted in wilderness areas. (See CRS Report RS22025, *Wilderness Laws: Permitted and Prohibited Uses*.) Similarly, agency wilderness studies are controversial because many uses also are restricted in the study areas to preserve wilderness characteristics while Congress considers possible designations.

Some observers believe that the Clinton rule protecting national forest roadless areas (discussed below) was prompted by a belief that Congress had lagged in designating areas which "should" be wilderness. Others assert that the Bush Administration — in addressing R.S. 2477 rights-of-way (discussed below), promulgating new guidance to end additional, formal BLM wilderness study areas, and eliminating the nationwide national forest roadless area protections of the Clinton Administration — is attempting to open areas with wilderness attributes to roads, energy and mineral exploration, and development, thereby making them ineligible to be added to the Wilderness System.

Administrative Actions. The Wilderness Act directed the Secretary of Agriculture to review the wilderness potential of administratively designated national forest primitive areas and the Secretary of the Interior to review the wilderness potential of National Park System and National Wildlife Refuge System lands. The Forest Service expanded its review and sent recommendations to the President and Congress in 1979. *Release language*, in statutes designating national forest wilderness areas, and the new FS planning regulations (36 C.F.R. §219.7(a)(5)(ii)) provide for periodic review of potential national forest wilderness areas in the agency's planning process.

The Secretary of the Interior was directed to review the wilderness potential of BLM lands in §603 of FLPMA, and to maintain the wilderness character of wilderness study areas (WSAs) "until Congress has determined otherwise." In 1996, following debate over additional wilderness areas proposed in legislation for Utah, then-Secretary Bruce Babbitt used the BLM authority to inventory its lands and resources (§201 of FLPMA; 43 U.S.C. §1711) to identify an additional 2.6 million acres in Utah as having wilderness qualities. The state of Utah filed suit alleging that the inventory was illegal. On September 29, 2003, Interior Secretary Gale Norton settled the case and issued new wilderness guidance (Instruction Memoranda Nos. 2003-274 and 2003-275) prohibiting further wilderness reviews and limiting the *nonimpairment* standard of management to the BLM's previously designated WSAs. (See CRS Report RS21917, *Bureau of Land Management (BLM) Wilderness Review Issues*.)

Legislative Activity. Many wilderness recommendations remain pending, including some FS areas and many BLM and Park System areas. Nearly 20 such bills for wilderness areas in more than a dozen states have been introduced this Congress. The "Legislation" section of this report does *not* identify these bills; it identifies bills to substantively amend the Wilderness Act or alter wilderness or WSA management.

Bills were introduced in the 106th, 107th, and 108th Congresses to prohibit future BLM wilderness reviews and to place time limits on WSA status, generally terminating WSAs 10

years after the bills' enactment or after Congress establishes new WSAs. The House Committee on Resources reported bills in the 106th and 107th Congresses, but there was no floor consideration. No action occurred in the 108th Congress. To date, no wilderness review or WSA legislation had been introduced in the 109th Congress.

Wildfire Protection (by Ross W. Gorte)

Background. Recent fire seasons have killed firefighters, burned homes, threatened communities, and destroyed trees. The 2005 fire season is on a pace to be the worst since record-keeping began in 1960, with 8.2 million acres burned through October 14, nearly 80% above the 10-year average. Many assert that the threat of severe wildfires has grown, because many forests have unnaturally high fuel loads (e.g., dense undergrowth and dead trees) and increasing numbers of structures are in and near the forests (the *wildland-urban interface*). Reducing fuels on federal lands has been urged as a way to reduce the threats from fire. Proponents of fuel reduction contend that needed treatments often are delayed by environmental studies, administrative appeals, and litigation. Opponents of accelerated review processes argue that *streamlining* fuel projects could increase logging on federal lands, that such projects might not receive proper environmental review, and that reducing fire risk in the interface requires reducing fuels and modifying structures on private lands. The National Fire Plan is the program of wildfire protection activities and funding for the FS and BLM.

Administrative Actions. In August 2002 (107th Congress), President Bush proposed a Healthy Forests Initiative to improve wildfire protection by expediting projects to reduce hazardous fuels on federal lands. Congress enacted the Healthy Forests Restoration Act of 2003 (P.L. 108-148) with many of the proposals in the President's initiative and other provisions (described below under "Legislative Activity").

The Administration has made several regulatory changes to facilitate fire protection activities, which are unaffected by P.L. 108-148. First, two new categories of actions can be excluded from NEPA analysis and documentation: fuel reduction and post-fire rehabilitation activities (68 *Fed. Reg.* 33814, June 5, 2003). These categorical exclusions are limited in scale, and cannot be used in certain areas or under certain circumstances, but may be used for timber sales if fuel reduction is the primary purpose. Second, the administrative review processes were revised (68 *Fed. Reg.* 33582, June 4, 2003, for the FS; 68 *Fed. Reg.* 33794, June 5, 2003, for the BLM). The revisions sought (1) to clarify that some emergency actions may be implemented immediately and others after complying with publication requirements; and (2) to expand emergencies to include those "that would result in substantial loss of economic value to the Government if implementation of the proposed action were delayed." A U.S. District Court found these and other regulations violate the legal requirements for public review of FS decisions. (See "Other Issues," below.)

The Administration has made other regulatory changes that could affect fuel reduction, public involvement, and environmental impacts. For example, new categorical exclusions for small timber harvesting projects (68 *Fed. Reg.* 44598, July 29, 2003) and new regulations for FS planning (70 *Fed. Reg.* 1023, Jan. 5, 2005; see "Other Issues," below) have been completed. The total impact of the regulatory changes is generally greater discretion for FS action without environmental studies and with fewer opportunities for the public to comment on, or to request administrative review of, those actions.

Legislative Activity. H.R. 1904, the Healthy Forests Restoration Act of 2003, was signed into law (P.L. 108-148) on December 3, 2003. (See CRS Report RS22024, *Wildfire Protection in the 108th Congress*.) Title I authorized a new, alternative process for reducing fuels on FS or BLM lands in many areas. The act contained five other titles that indirectly relate to fire protection.

The 109th Congress is overseeing the implementation of this law. On February 17, 2005, a House Resources subcommittee hearing focused on a Government Accountability Office (GAO) review of progress in wildfire protection. The GAO report (GAO-05-147) and testimony (GAO-05-353T) found some progress, but noted that the agencies lack a cohesive long-term strategy for addressing excess fuels and other wildfire threats. On April 26, 2005, the Senate Energy and Natural Resources Committee held a hearing on wildfire preparedness. GAO's report (GAO-05-380) and testimony (GAO-05-627T) noted that the knowledge and technology for protecting structures and improving communications exist, but their adoption by landowners and governmental agencies has been slow. Also, questions were raised about the airworthiness of firefighting airtankers, in the wake of an airtanker crash in California on April 20, 2005. On July 14, 2005, witnesses testified before a House Appropriations subcommittee on progress in implementing the National Fire Plan; GAO testified on the need for identifying long-term options and funding needs (GAO-05-923T). On August 31, 2005, the House Resources Subcommittee on Forests and Forest Health held a field hearing on the health of the Black Hills (SD) National Forest.

Congress also has addressed wildfire protection through appropriations. The FY2006 Interior appropriations act (P.L. 109-54) included $2.59 billion for the National Fire Plan, $76.7 million (3%) more than the Administration requested and $413.2 million (14%) less than the FY2005 appropriations (including $524.1 million of emergency and supplemental funds for FY2005).[1] The law also included provisions requiring a report on the Biscuit fire (OR) rehabilitation and consideration of the effects of competitive sourcing (see below) on wildfire protection. (See CRS Report RL32893, *Interior, Environment, and Related Agencies: FY2006 Appropriations*.) In addition, bills have been introduced to alter firefighter and fire organization compensation and safety practices, and a provision was included in the Energy Policy Act of 2005 (§210) authorizing grants for producing energy from biomass fuels removed from forests to reduce wildfire risks.

Southern Nevada Public Land Management Act (by Carol Hardy Vincent)

Background. Historically, proceeds from the sale of BLM lands under various laws were deposited in the general fund of the Treasury. Certain recent laws have provided for land sales and established separate Treasury accounts available to the Secretary for subsequent land acquisition and other purposes. A proposal in the President's FY2006 budget seeks to change one such law — the Southern Nevada Public Land Management Act (SNPLMA, P.L. 105-263) — to send most proceeds to the Treasury.

SNPLMA allows the Secretary of the Interior to sell or exchange certain lands around Las Vegas, NV. The Secretary and the relevant local government unit jointly choose the

[1] Funding has risen substantially over the past decade or so. Average spending for FY1994-FY1999 was $1.07 billion annually.

lands offered for sale or exchange. In practice, these responsibilities of the Secretary are performed by the BLM. State and local governments get priority to acquire lands for local purposes under the Recreation and Public Purposes Act (43 U.S.C. §869). Proceeds are distributed in different ways, depending on which lands are sold. In general, 85% is deposited into a special account, which is permanently appropriated for certain purposes, including (1) federal acquisition of environmentally sensitive lands in Nevada; (2) development of a multi-species habitat conservation plan in Clark County, NV; (3) conservation initiatives on federal land in Clark County; (4) capital improvements at certain federal areas; and (5) development of parks, trails, and natural areas in Clark County. The other 15% of the revenues are provided to the state of Nevada and certain local entities for state and local purposes, such as the Nevada general education program.

The law was enacted in part to promote sale of federal land for development near fast-growing Las Vegas, to acquire environmentally sensitive land, and to foster competition in land disposals in response to criticisms that the government did not consistently receive a fair price for land it sold. Collections from SNPLMA land sales in FY2005 are estimated at $1.2 billion, vastly exceeding expectations at the time the law was enacted ($70 million annually) and more than double the amount collected in FY2004 ($530.5 million).

Administrative Actions. The President's FY2006 budget request supported amending SNPLMA to change the allocation of revenue to the special account. The Administration recommended that 15% of the receipts go to the special account and 70% go to the Treasury, with the remaining 15% to the state of Nevada and local entities as under current law. The Administration stated that because SNPLMA land sales have produced receipts far beyond expectations, there is significantly more revenue than is needed for land acquisition in Nevada. Consequently, proceeds of land sales increasingly are being used for local projects which are not overseen by Congress, thus reducing accountability, and do not reflect the highest needs of the nation, according to the Administration. Further, the change would still provide for far more money for Nevada than anticipated when the law was enacted, according to the Administration. The SNPLMA proposal could be opposed as impeding development in the Las Vegas area, federal acquisition of land with valuable resources, and conservation and recreation initiatives in Clark County. It is one of many changes advocated by the Administration that affect receipts or spending levels in FY2006 or subsequent years.

Legislative Activity. Administration budget documents for FY2006 stated that the President intends to submit a legislative proposal to accomplish his desired change regarding SNPLMA receipts. The Administration has not done so to date, according to the BLM, and no related legislation has been introduced to amend SNPLMA. P.L. 109-54, the FY2006 Interior appropriations act, did not include a House-passed provision to require the Secretary of the Interior to report on expenditures under SNPLMA during FY2003 and FY2004.

R.S. 2477: Rights of Way Across Public Lands (by Pamela Baldwin)

Background. In 1866, in an act that became Revised Statute (R.S.) 2477, Congress granted rights of way across unreserved public lands "for the construction of highways." This grant was repealed in 1976, but existing rights were protected. What constitutes construction of highways and whether a qualifying right of way existed by the time of repeal in 1976 can be contentious. These issues are important because possible rights of way may

affect the management of federal lands, perhaps degrading their wilderness suitability while increasing access for recreation and other uses. Section 108 of the FY1997 Interior appropriations act (P.L. 104-208) states that final regulations "pertaining to" R.S. 2477 rights of way cannot take effect unless expressly authorized by an act of Congress.

Administrative Actions. On January 6, 2003 (68 *Fed. Reg.* 494), the BLM finalized changes to its regulations for issuing "disclaimers of interest," a procedure to help clear title to property or interests in property with respect to possible interests of the United States. This procedure is to be used to acknowledge R.S. 2477 rights of way. Interior Secretary Norton and the state of Utah executed a Memorandum of Understanding on April 9, 2003, under which the DOI will acknowledge the existence of R.S. 2477 rights of way in Utah, by disclaiming any federal interest. Other states also have requested MOUs. The MOU does not fully clarify what criteria will be used to validate right of way claims. Critics assert that the disclaimer regulations "pertain to" R.S. 2477 rights of way and are unlawful under §108 of P.L. 104-208. GAO has concluded that the Utah MOU itself is an unlawful regulation pertaining to R.S. 2477 (GAO Opinion B-300912, *Recognition of R.S. 2477 Rights-of-Way Under the Department of the Interior's FLPMA Disclaimer Rules and Its Memorandum of Understanding with the State of Utah*, Feb. 6, 2004). The first notice of an application for a disclaimer (filed in regard to a Utah road) was published on February 9, 2004 (69 *Fed. Reg.* 6000); Utah withdrew the application on September 16, 2004. Two new Utah applications have been filed (70 *Fed. Reg*. 19500, April 13, 2005). A recent case concluded that state law plays a significant role in determining the validity of R.S. 2477 highways, but also cast doubt on the use of administrative disclaimers to validate such rights of way. (See *SUWA v. BLM*, 2005 U.S. App. LEXIS 19381 (10th Cir. 2005).)

Legislative Activity. The 108th Congress considered, but did not enact, legislation to establish a process for resolving R.S. 2477 claims and define certain terms critical to evaluating the validity of such claims. Also in the 108th Congress, the House approved an amendment to FY2004 Interior appropriations legislation to prohibit implementation of the 2003 changes to the disclaimer regulations in certain federal conservation areas, but this language was eliminated in conference. H.R. 3447 in the 109th Congress would establish an administrative process and criteria for resolving R.S. 2477 claims.

Other Issues

Several other federal lands topics could be addressed through legislation or oversight. These include agency competitive sourcing initiatives, grazing management, hardrock mining, national forest planning, national monuments and the Antiquities Act, and roadless areas of the National Forest System.

Competitive Sourcing. (by Carol Hardy Vincent) The Bush Administration's Competitive Sourcing Initiative would subject federal agency activities judged to be commercial in nature to public-private competition. This government-wide effort could affect diverse activities in agencies including BLM and the FS. The goal is to save money through competition, particularly in areas where private business might provide better services (e.g., administration and maintenance). The plan is controversial, with concerns as to whether it would save the government money, the private sector could provide the same quality of service, or it is being used to accomplish policy objectives. Through December 2004, BLM had studied 415 full-time equivalents (FTEs) to determine whether they should

be subject to competitive bidding. That is 12% of the agency's 3,340.5 FTEs identified as commercial. While 176 FTEs were subjected to competitive bidding, none were contracted out. For the FS, similar information is not readily available.

P.L. 109-54, the FY2006 Interior appropriations law, capped DOI competitive sourcing studies during FY2006 at $3.45 million. It did not specify the portion for BLM. BLM had sought $562,000, for planning and competitive sourcing studies during FY2006 on up to 150 FTEs. The law limited FS spending on competitive sourcing during FY2006 to no more than $3.0 million. The Administration had urged removing the funding limitations. Further, the law directed the Secretary of Agriculture to assess the affect of contracting out on FS fire management, and specified that agencies include, in any reports to the Appropriations Committees on competitive sourcing, information on the costs associated with sourcing studies and related activities.

Grazing Management. (by Carol Hardy Vincent) The BLM had expected to publish new grazing regulations in the *Federal Register* in mid-July, but on August 9, 2005, the agency announced its intent to prepare a supplement to the Final Environmental Impact Statement (FEIS). The agency expects to develop the supplement in the fall of 2005 for public review and comment. The FEIS, which was issued on June 17, 2005, analyzed the impact of proposed changes to grazing regulations as well as of two alternatives. (See [http://www.blm.gov/grazing/].) BLM asserts that regulatory changes are needed to comply with court decisions, increase flexibility of managers and permittees, improve administrative procedures and business practices, and promote conservation. Some of the changes in the FEIS would (1) allow title to range improvements to be shared by the BLM and permittees, (2) allow permittees to acquire water rights for grazing if consistent with state law, (3) change the definition of "grazing preference" to include an amount of forage, (4) eliminate conservation use grazing permits, (5) extend the time to remedy rangeland health problems, and (6) reduce occasions where BLM is required to consult with the public. BLM did not address some controversial issues, such as revising the grazing fee. BLM expects to return to the consideration of related grazing policy changes when the regulatory process is completed. On September 28, 2005, a Senate subcommittee held an oversight hearing on the regulatory changes and other grazing issues

Legislation has been introduced to compensate livestock operators on federal lands. H.R. 411 seeks to require federal land management agencies to compensate holders of grazing permits when certain actions reduce or eliminate their permitted grazing, and alternative forage is not available. The bill also would authorize grazing permit holders to sublease their allotments under specified conditions. Other legislation provides for buying out grazing permittees generally or in particular areas, with the allotments then permanently closed to grazing. H.R. 3166 provides for payment to federal grazing permittees who voluntarily relinquish their permits, at a rate of $175 per AUM. The bill also provides for payments to counties in which the relinquished allotments are located, and authorizes permittees to opt for nonuse or reduced use throughout a term. Other examples include H.R. 3701, regarding lands included in Ecosystem Protection Areas that would be created under the legislation, and H.R. 3603, for certain lands in Idaho.

Hardrock Mining. (by Aaron M. Flynn) Reform of the General Mining Act of 1872, the law governing hardrock mining on federal lands, may be considered in the 109th Congress. The Mining Act authorizes a prospector to locate and claim an area believed to

contain a valuable mineral deposit, subject to the payment of certain fees. At such time, mineral development may proceed. Comprehensive legislation to reform the development of these mineral resources, H.R. 3968, has been introduced in the 109th Congress. Among other things, this bill would require a royalty payment based on hardrock mineral production, resolve current disputes regarding the number of acres available for mine-associated mill sites, prohibit patenting of federal lands in most circumstances, and establish new standards for determining which federal lands are available for development.

National Forest Planning. (by Ross W. Gorte) New FS planning regulations were promulgated by the Clinton Administration in November 2000, but their implementation was delayed. On January 5, 2005, the Bush Administration issued two new rules. The first (70 *Fed. Reg.* 1022) removed the Clinton regulations, and the second (70 *Fed. Reg.* 1023-1061) finalized new FS planning regulations. The Clinton regulations established ecological sustainability as the priority for managing national forests. The Bush regulations seek to simplify planning in response to concerns about the feasibility of the Clinton regulations. Plans are to articulate desired conditions and goals, and most planning details have been moved to agency "directives," some of which were published on March 23, 2005 (70 *Fed. Reg.* 14637). The new regulations replace ecological sustainability as the main priority with a balance of ecological, economic, and social sustainability. The regulations do not address species viability, roadless areas, or many other specific topics. Because plans will guide activity decisions but not make decisions, the regulations allow plans to be categorically excluded from NEPA analysis (see below) and public involvement requirements. House Agriculture Committee hearings were held on the new FS planning regulations on May 25, 2005 (H. Serial 109-9).

Forest Service NEPA Categorical Exclusions. (By Ross W. Gorte) The Forest Service has historically identified certain activities as not having significant environmental impacts, and thus exempted them from analysis and public participation under the National Environmental Policy Act of 1969 (NEPA; P.L. 91-190, 43 U.S.C. §§4321-4347), except in extraordinary circumstances. Various regulations have expanded the exempt activities in recent years, including for biomass fuel reduction projects (68 *Fed. Reg.* 33814, June 5, 2003), for "small" timber sales (68 *Fed. Reg.* 44598, July 29, 2003), and for forest plans (70 *Fed. Reg.* 1023, Jan. 5, 2005; see above). The agency has also modified its application of extraordinary circumstances (67 *Fed. Reg.* 54622, Aug. 23, 2002). Previously, the rule specified that the presence of extraordinary circumstances would automatically preclude an action being categorically excluded; the new rule gives the responsible official discretion to determine whether extraordinary circumstances warrant NEPA analysis and public involvement in otherwise exempt projects. Several of the 2003 regulations were challenged. On July 2, 2005, a U.S. District Court ruled that five regulations violated the Forest Service Decision Making and Appeals Reform Act (§322 of P.L. 102-381; 16 U.S.C. §1612 note) by excluding decisions from the public comment and appeals process and for other reasons (*Earth Island Institute v. Ruthenbeck*, 376 F.Supp. 2d 994 (E.D. Cal. 2005). The agency has responded to the ruling and subsequent orders by suspending more than 1,500 permits, projects, and contracts. On October 18, 2005, Senators Bingaman and Harkin sent a letter to President Bush asserting that the agency took an "unnecessary and inappropriate response" by suspending non-controversial activities, such as firewood cutting permits, and asking for a more rational response.

Roadless Areas of the National Forest System. (by Pamela Baldwin) The Clinton Administration issued several rules affecting the roadless areas of the National Forest System (NFS). The principal rule (66 *Fed. Reg.* 3244, Jan. 12, 2001) resulted in a nationwide approach to management that curtailed (but did not eliminate) most roads and timber cutting in roadless areas. National guidance was justified as avoiding the litigation and delays when decisions were made at each national forest. The rule was twice enjoined. The Bush Administration issued a new final rule to replace the Clinton rule and allow governors 18 months to petition the FS for a special rule for roadless areas in all or part of their state (70 *Fed. Reg*. 25654, May 13, 2005). Until such a new regulation in response to a petition is finalized, the FS is to manage roadless areas in accordance with interim directives (69 *Fed. Reg*. 42648, July 16, 2004) that place most decisions with the Regional Forester, and the Chief of the FS, until each forest plan is amended or revised to address roadless area management. This returns decisions on roadless area management to the individual forest plans, basically reversing the Clinton nationwide roadless rule. The new NFS planning regulations (see above) do not address roadless areas, apparently leaving decisions involving them to the project level within each forest, unless a special rule is adopted for a particular state. California, New Mexico, and Oregon have sued to challenge the new roadless area rule. H.R. 3563 has been introduced to direct that roadless areas be managed in accordance with the 2001 regulations.

National Monuments and the Antiquities Act. (by Carol Hardy Vincent) Presidential establishment of national monuments under the Antiquities Act of 1906 (16 U.S.C. §§431, et seq.) sometimes has been contentious. President Clinton's establishment or enlargement of 22 monuments set off renewed controversy regarding presidential authority to proclaim monuments. The 108th Congress focused on land uses within monuments (e.g., recreation, off-highway vehicles, and commercial uses); the inclusion of non-federal lands in monument boundaries; and whether the President should be required to seek congressional, state, or public input or environmental reviews. A bill was introduced to limit the President's authority to designate national monuments and establish a process for input into presidential monument designations, but no further action was taken. Similar legislation has not been introduced in the 109th Congress.

LEGISLATION

H.R. 6 (Barton); P.L. 109-58

The Energy Policy Act of 2005, among other provisions, amends the Geothermal Steam Act of 1970 and the Mineral Leasing Act, requires the Secretary of the Interior to evaluate the oil and gas leasing process, and shields various energy-related activities on federal lands from review under NEPA. The conference report was filed July 27, 2005, and agreed to by the House and Senate. Signed into law August 8, 2005.

H.R. 297 (Rahall); S. 576 (Byrd)

These bills amend the Wild Horses and Burros Act to restore the prohibition on the commercial sale and slaughter of wild horses and burros. H.R. 297, introduced January 25, 2005; referred to Committee on Resources. S. 576, introduced March 9, 2005; referred to Committee on Energy and Natural Resources.

H.R. 411 (Renzi)

The Cattleman's Bill of Rights Act directs compensation for ranchers when federal actions reduce their allowed amount of grazing. Introduced January 26, 2005; referred to Committee on Resources and Committee on Agriculture.

H.R. 2993 (Porter); S. 1273 (Reid)

These bills foster the sale and adoption of wild horses and burros while strengthening protections. H.R. 2993, introduced June 20, 2005; referred to Committee on Resources. S. 1273, introduced June 20, 2005; referred to Committee on Energy and Natural Resources.

H.R. 3166 (Grijalva)

The Multiple-Use Conflict Resolution Act compensates livestock operators who voluntarily relinquish grazing permits. Introduced June 30, 2005; referred to Committee on Resources, Committee on Agriculture, and Committee on Armed Services.

H.R. 3447 (Udall, M.)

The Highway Claims Resolution Act of 2005 establishes an administrative process and criteria to resolve R.S. 2477 claims. Introduced July 26, 2005; referred to Committee on Resources.

H.R. 3563 (Inslee)

The National Forest Roadless Area Conservation Act directs that inventoried roadless areas of the national forests be managed in accordance with the 2001 regulations. Introduced July 28, 2005; referred to Committee on Agriculture and Committee on Resources.

H.R. 3710 (Markey)

Under certain circumstances, the bill would direct the suspension of royalty relief programs for oil and natural gas production from federal lands and authorize resulting revenues to be used for specified hurricane relief and low income energy assistance programs. Introduced September 8, 2005; referred to Committee on Resources, Committee on Transportation and Infrastructure, Committee on Energy and Commerce, and Committee on Education and the Workforce.

H.R. 3893 (Barton)

The Gasoline for America's Security Act would, among other things, require the President to designate certain federal lands, which might include lands under the jurisdiction of BLM or FS, as suitable for refinery construction or expansion, at which time an expedited permitting process would be available for a refinery sited in the designated area. Introduced September 26, 2005; passed by the House October 7, 2005.

H.R. 3968 (Rahall)

The Federal Mineral Development and Land Protection Equity Act of 2005 would require a royalty payment based on hardrock mineral production, resolve current disputes regarding the number of acres available for mine associated mill sites, prohibit patenting of federal lands in most circumstances, and establish new standards for determining which federal lands are available for development. Introduced October 6, 2005; referred to House Subcommittee on Energy and Mineral Resources.

FOR ADDITIONAL READING

CRS Report RS21917, *Bureau of Land Management (BLM) Wilderness Review Issues*, by Ross W. Gorte and Pamela Baldwin.

CRS Issue Brief IB10143, *Energy Policy: Legislative Proposals in the 109th Congress*, by Robert L. Bamberger.

CRS Report RL32393, *Federal Land Management Agencies: Background on Land and Resources Management*, by Carol Hardy Vincent, coordinator.

CRS Report RS21402, *Federal Lands, "Disclaimers of Interest," and R.S. 2477*, by Pamela Baldwin.

CRS Report RL30755, *Forest Fire/Wildfire Protection*, by Ross W. Gorte.

CRS Report RL32244, *Grazing Regulations: Changes by the Bureau of Land Management*, by Carol Hardy Vincent.

CRS Report RL32142, *Highway Rights of Way on Public Lands: R.S. 2477 and Disclaimers of Interest*, by Pamela Baldwin.

CRS Report RL32893, *Interior, Environment, and Related Agencies: FY2006 Appropriations*, Carol Hardy Vincent and Susan Boren, co-coordinators.

CRS Report RL30647, *The National Forest System Roadless Areas Initiative*, by Pamela Baldwin.

CRS Report RS20902, *National Monument Issues*, by Carol Hardy Vincent.

CRS Report RL32315, *Oil and Gas Exploration and Development on Public Lands*, by Marc Humphries.

CRS Report RL32936, *Omnibus Energy Legislation, 109th Congress: Assessment of H.R. 6 as Passed by the House*, by Mark Holt and Carol Glover, co-coordinators.

CRS Report RS21423, *Wild Horse and Burro Issues*, by Carol Hardy Vincent.

CRS Report RS22025, *Wilderness Laws: Permitted and Prohibited Used*, by Ross W. Gorte.

CRS Report RL31447, *Wilderness: Overview and Statistics*, by Ross W. Gorte.

CRS Report RS21544, *Wildfire Protection Funding*, by Ross W. Gorte.